

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANCIS WILES and JUDY T.
WILES (rep),

Plaintiffs,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

4:13-CV-3014

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. On February 12, 2013, the Court granted plaintiffs leave to proceed in forma pauperis. Filing 4. The Court directed the Clerk's Office to send plaintiffs three blank summons forms and three copies of Form 285 for use in completing service of process on the United States. The Court's order further stated that plaintiffs were required to effect service of process no later than 120 days after the complaint has been filed. The record reflects that the Clerk's Office sent these forms to plaintiffs on the same day.

The record also shows that although plaintiffs returned the completed summons forms, they have not completed service of process. See filing 5. Pursuant to Federal Rule of Civil Procedure 4, service of process must be completed within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m). Because the plaintiffs returned the summons forms on the 119th day, the Court waited an additional 2 weeks to see if service would be completed. It has not been.

Where service has not been completed within 120 days after the filing of the complaint, the Court may, on its own motion, dismiss the action without prejudice or order that service be made within a specified time, provided that the plaintiff is first notified. Fed. R. Civ. P. 4(m). Additionally, if a plaintiff shows there was "good cause" for the failure to complete service in a timely fashion, the Court must extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m); *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996). Accordingly,

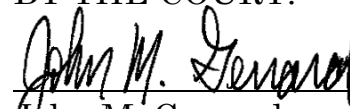
IT IS ORDERED:

1. Plaintiffs shall have until July 3, 2013, to complete service of process or to show cause why this case should not be dismissed for their failure to effect service of process. If plaintiffs do not respond, or if good cause is not shown, this action will be dismissed without prejudice and without further notice.

2. The clerk's office is directed to set a pro se case management deadline with the following text: July 3, 2013: deadline for plaintiffs to show cause why service of process was not completed.

Dated this 3rd day of June, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge

Notice Regarding Federal Rule of Civil Procedure 4(i)

Federal Rule of Civil Procedure 4(i) regarding “Serving the United States and Its Agencies, Corporations, Officers, or Employees,” states:

(1) *United States*. To serve the United States, a party must:

- (A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or
- (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and
- (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity*. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually*. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time*. The court must allow a party a reasonable time to cure its failure to:

- (A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or
- (B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.